



# OFFICE OF DISCIPLINARY COUNSEL

March 7, 2018

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**VIA FIRST-CLASS AND  
CERTIFIED MAIL NO. 9414 7266 9904 2091 4488 10**

Evangeline Covington, Esquire  
5200 North Capitol Street, N.W.  
Apartment 3  
Washington, D.C. 20011

Re: *In re Evangeline Covington, Esquire*  
(D.C. Bar Registration No. 429791)  
Bar Docket No. 2013-D221

Dear Ms. Covington:

The Office of Disciplinary Counsel has completed its investigation of the above-referenced matter. We find that your conduct reflected a disregard of certain ethics standards under the District of Columbia Rules of Professional Conduct (the Rules). Accordingly, we are issuing you this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8.

This matter was docketed for investigation based on a disciplinary complaint filed by your former client, Ms. L., who reports that you, inter alia, failed to file her medical malpractice case within the applicable statute of limitations. Based upon our investigation, we find that your conduct violated Rules 1.1(a) and 1.5(e).

In July 2007, Ms. L underwent surgery at George Washington University Hospital and suffered significant injuries because of the alleged negligence of her medical providers. Ms. L originally retained Jenson Barber, Esquire, to pursue her medical malpractice claim. In September 2009, Mr. Barber passed away unexpectedly before filing Ms. L's claim.

In October 2009, Ms. L retained you to pursue her claim. In July 2010, you served notices of intent to sue upon defendants as required by District of Columbia law.<sup>1</sup> To that end, you served District Hospital Partners, LP, and George Washington University Medical Faculty Associates. You did not, however, serve a notice on Ms. L's treating surgeon, Dr. J. K. R., III, because you believed that the notice to District Hospital Partners, LP, would suffice.

Thereafter, you deemed it appropriate to consult with another attorney who had experience handling medical malpractice cases. That attorney reviewed Ms. L's file and engaged an expert to review her medical records. The expert concluded that Ms. L had a viable claim and the attorney agreed to represent her. On October 10, 2010, Ms. L formally retained the other attorney as her counsel.<sup>2</sup>

On October 13, 2010, Ms. L sent you a letter discharging you as her attorney. Thereafter, the other attorney, entered into an agreement with you to remain as co-counsel on the case. The other attorney notified Ms. L of this agreement via email.<sup>3</sup> Ms. L did not respond to that email. On October 18, 2010, you and the other attorney filed Ms. L's medical malpractice claim in the Superior Court for the District of Columbia.

In February 2011, the court granted defendant Dr. R's motion to dismiss the October 2010 lawsuit, because he had not been personally served with the notice required by D.C. Code § 16-2802(c). Specifically, the court concluded that although Dr. R worked at the hospital, District Hospital Partners, LP ("hospital") was not a registered agent authorized to accept service on his behalf.

In March 2011, you served Dr. R with notice of your client's intent to file the second medical malpractice lawsuit, as required by the statute. You and the other attorney filed your client's second complaint in June 2011. In September 2011, the court consolidated the 2010 and 2011 complaints into one case. Subsequently, all defendants filed a joint motion for summary judgment, claiming the new complaint was filed outside the three-year statute of limitations for

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<sup>1</sup> District of Columbia Code § 16-2802(a): "Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action..."

<sup>2</sup> Ms. L has also filed an ethical complaint against that attorney, whom we have also investigated. Our disposition of that matter is addressed under the cover of a separate letter.

<sup>3</sup> The email to Ms. L which was dated February 8, 2011, states: "I was made aware of the correspondence you sent to Evangeline Covington on October 28, 2010. Your correspondence in effect discharged her from representation of this case. However, as discussed in our meeting at the time you signed the retainer agreement, Ms. Covington will be co-counsel on this matter and as such, a fee split of the retainer amount will take place should a recovery be had..."

medical malpractice claims.<sup>4</sup> The trial court granted that motion for summary judgment on January 7, 2013.

In its opinion, the trial court acknowledged that the statute of limitations on Ms. L's claim should be extended because of the "discovery rule," but determined that the suit should have been filed on or before January 8, 2011.

On January 22, 2013, you and the other attorney filed a notice of appeal. In July 2014, the Court of Appeals affirmed the trial court's ruling. Consequently, your client is now statutorily barred from pursuing her medical malpractice claim.

Based upon our investigation, we find that your conduct violated Rules 1.1 and 1.5.

1. Rule 1.1 provides pertinently:

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

In your attempt to serve Dr. R with the statutorily required notice of intent to sue, you served the hospital where he works rather than him or his registered agent. You explain that you spoke by telephone with someone at the hospital, and concluded that the hospital was his agent. The trial court rejected this argument, noting that a google search of the doctor's name would have provided the information you needed to effect proper notice. We find that your decision to serve only the hospital demonstrated a lack of analysis, skill, thoroughness, and preparation necessary for competent representation. Accordingly, we find that your failure to serve Dr. R with timely notice of the suit violates Rule 1.1(a).

Based upon our investigation, we do not find that you violated any Rules regarding the missed statute of limitations. The court determined that Ms. L was on notice of her injuries in January 2008, rather than March 2008 as you had argued.<sup>5</sup> The Court chose the earlier date because Ms. L first saw a doctor in connection with her post-surgery complaints in January 2008. You first learned that Ms. L had the January 2008 medical visit during her deposition. Prior to the deposition, neither she nor the file of predecessor counsel, put you on notice that she had seen a physician about her concerns prior to March 2008.

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<sup>4</sup> As referred above, Ms. L's surgery occurred in July 2007. Consequently, under ordinary circumstances, the civil complaint should have been filed in July 2010.

<sup>5</sup> Had Ms. L's "discovery" occurred in March 2008, your filing of the amended lawsuit in July 2011 would have been timely because of the tolling provision in D.C. Code §16-2803, which provides: "If the notice required under §16-2802 is served within 90 days of the expiration of the statute of limitations, the time for the commencement of the action shall be extended 90 days from the date of the service of the notice."

2. Rule 1.5 provides pertinently:

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged;

(3) The client gives informed consent to the arrangement;  
and

(4) The total fee is reasonable.

As set forth above, Rule 1.5(e) proscribes the circumstances under which two attorneys from different firms may divide a single fee. The writing provided to Ms. L did not set forth the contemplated division of responsibility and anticipated effect of the association, nor did it seek or provide for informed consent to the co-representation.<sup>6</sup> Accordingly, we find that you violated Rule 1.5(e).

In deciding to issue this letter of Informal Admonition, rather than to initiate formal disciplinary charges, we have considered logistical challenges presented by being retained as the successor counsel in this matter, that your conduct does not involve dishonesty and you have cooperated with our investigation.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8. Once issued, it is public. Attached to this letter is a statement of an Informal Admonition's effects and your right to have it vacated should you choose to pursue a formal hearing before a hearing committee.

If you choose to pursue a formal hearing, you must a written request to the Office of Disciplinary Counsel and provide a copy for the Board on Professional Responsibility within 14 days of this letter, unless Disciplinary Counsel grants an extension of the deadline. If you request a hearing, this Informal Admonition will be vacated, and Disciplinary Counsel will institute formal charges pursuant to D.C. Bar Rule XI, §§ 8(b) and (c). The case will be assigned to a Hearing

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<sup>6</sup> As a division of fees among you and the other attorney never took place, because the civil action was not successful. Nonetheless we find that Rule 1.5 (e) applies in this matter because Rule 8.4(a) provides pertinently that it is professional misconduct for an attorney to "violate or attempt to violate the Rule of Professional Conduct..."



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Committee. A hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar Rule XI, § 8(c). The Hearing Committee may recommend dismissing the charges against you or finding you culpable. If you are found culpable, the Hearing Committee's recommended sanction will not be limited to an Informal Admonition.

Sincerely,



Hamilton P. Fox, III  
Disciplinary Counsel

Enclosure: Attachment letter to Informal Admonition

cc: Ms. L (w/o enclosure)

HPF:HCS:adlt